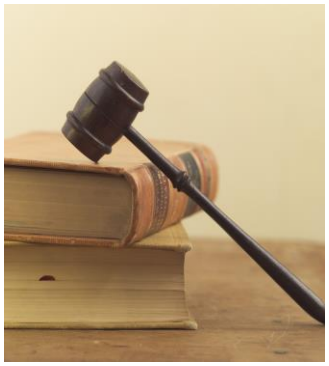


2023 FLORIDA JUDICIAL COLLEGE

PHASE II – March 2023

Guide to Disqualification and Recusal

Guide to Disqualification Motions and Recusal

THE HONORABLE GARY P. FLOWER
COUNTY COURT JUDGE
DUVAL COUNTY

THE HONORABLE DANIELLE L. BREWER
CIRCUIT JUDGE
12TH CIRCUIT

MATERIALS CREATED AND UPDATED BY THE HONORABLE GARY P. FLOWER
AND UPDATED BY THE HONORABLE STEVEN P. DELUCA, THE HONORABLE KIMBERLY C. BONNER,
AND THE HONORABLE DANIELLE L. BREWER

~ UPDATED THROUGH FEBRUARY 2023

Table of Contents

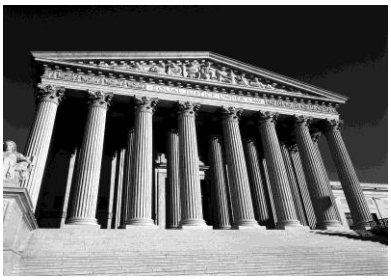
Section 1

Introduction to Disqualification and Recusal

The terms disqualification and recusal are not interchangeable. Disqualification involves a litigant moving to have a judge removed from a case. Recusal is the voluntary action of judges removing themselves from a case.

Every motion for disqualification asks the same fundamental question: whether the litigant has reasonable cause to believe that he will be treated unfairly by the court. "The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially." *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983).

Relevant Statutes, Rule and Canons



Statutes. Section 38.02, Fla. Stat., creates the substantive right to request disqualification of a trial judge based on the judge's familial relationship with a party or interested person or if there is the necessity of calling the judge as a material witness. Section 38.10, Fla. Stat., gives litigants the substantive right to request disqualification of a trial judge for bias.

Rules. The procedures for disqualification are governed exclusively by Rule 2.330 of the Florida Rules of General Practice and Judicial Administration (formerly called the Florida Rules of Judicial Administration). These rules only apply to trial judges acting alone in a trial or appellate proceeding. The supreme court made several substantive amendments to these Rules as of March 1, 2021; therefore, some of the cases cited herein may refer to subsections that have since been re numbered.

Canons. Canons 2 and 3 also set forth the ethical considerations that mandate disqualification. The Canons, however, do not provide the procedural mechanism for removing a trial judge; they provide the substantive legal basis for such a motion.

Section 2

Summary Of Steps: Stop, Drop, And Rule

Stop
Stop everything on the case when you are served with the motion and do not enter any new rulings on other issues

Drop
Drop everything and review motion for procedural and legal sufficiency within four corners of document

Rule
Prepare a simple written order granting or denying the motion no later than 30 days of service

STEPS IN THE ANALYSIS OF A DISQUALIFICATION MOTION

Make a determination whether the motion for disqualification is an initial or successive motion. Each type of motion has unique standards the movant must meet and restrictions on the kind of order that can be entered by the court.

> *NOTE*: The clock is ticking: The current rule specifically states that the judge "shall take action on the motion immediately but no later than thirty days after the service." Motions are *automatically deemed granted* if the court fails to enter an order within thirty days after service. Fla. R. Gen. Prac. & Judicial Admin. 2.330(g)

PROCEDURAL RULES ON DISQUALIFICATION:

The Florida Rules of General Practice and Judicial Administration contain the requirements a litigant must meet in order to disqualify the trial judge and the applicable time frames in which to file the motion. They also require the judge to rule

promptly. The Rules distinguish between a litigant's first, or initial motion to disqualify, and a successive motion(s) to disqualify a different judge in the same case.

Disqualification motions can be denied based on procedural insufficiencies, even if the factual allegations are otherwise sufficient. (Note: 2021 rule amendments are highlighted in bold).

Initial (i.e. "First Bite at the Apple") Motions for Disqualification.

1. The requirements of Rule 2.330, Fla. R. Gen. Prac. & Jud. Admin:

> Motions must be in writing.[1] Rule 2.330(c)(1), Fla. R. Gen. Prac. & Jud. Admin.
>
> Allege with specificity the facts and reasons as grounds for disqualification "**and identify the precise date when the facts constituting the grounds for the motion were discovered by the party or the party's counsel, whichever is earlier.**" Rule 2.330(c)(2), Fla. R. Gen. Prac. & Jud. Admin.
>
> Parties have **20** days from the date of discovery to file and promptly serve the motion, or it is untimely. Rule 2.330(g), Fla. R. Gen. Prac. & Jud. Admin.
>
> Be sworn to **or affirmed** by a party by signing the motion by **attaching** a separate affidavit. Rule 2.330(c)(3), Fla. R. Gen. Prac. & Jud. Admin.
>
> Include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions. Rule 2.330 (c) (4), Fla. R. Gen Prac. & Jud. Admin.
>
> **Include a separate certification by the attorney for the party, if any, that the motion and client's statements are made in good faith.** Rule 2.330 (c) (5), Fla. R. Gen Prac. & Jud. Admin.
>
> Service: "**In addition to filing with the clerk, the movant shall promptly serve a copy of the motion on the subject judge as set forth in rule 2.516."** Rule 2.330 (d), Fla. R. Gen Prac. & Jud. Admin.[2]

---

[1] If an oral motion for disqualification is made during a hearing, it is an abuse of discretion by the court to deny a motion for continuance to allow a written motion to be prepared. *See Tyler v. State*, 816 So. 2d 755 (Fla. 4th DCA 2002) citing to *Reynolds v. State*, 568 So. 2d 76, 78 (Fla. 1st DCA 1990).

[2] This rule requires service via e-mail or regular mail with a certificate of service. Previously, this section applied the Florida Rules of Civil Procedure service provisions.

Grounds: Rule 2.330 (e) (1-4), Fla. R. Gen. Prac. & Jud. Admin., requires that a motion to disqualify shall set forth all specific and material facts upon which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: [3]

1) The party reasonably fears that he or she will not receive a fair trial or hearing because of a specifically described prejudice or bias of the judge;
2) The judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either or them, or the spouse or domestic partner of such a person has more than a de minimus economic interest in the matter, is a lawyer in the proceeding, has more than a de minimus interest that could be substantially affected by the proceeding; or is likely to be a material witness or expert;
3) The judge served as a lawyer or lower court judge in the matter or a lawyer with whom the judge previously practiced law served during such association as a lawyer in the matter; or
4) The judge has prior personal knowledge of or bias regarding disputed evidentiary facts concerning the proceeding.

2. If the motion is procedurally insufficient:

The court may deny a procedurally insufficient motion even if the facts would otherwise be sufficient. The court should merely deny the motion as legally insufficient without further comment.

Appellate review of an initial motion for disqualification is a pure question of law subject to a de novo standard of review. *Mansfield v. State*, 911 So. 2d 1160 (Fla. 2005). Note the recent rule amendments require the movant to state the precise date when the grounds for disqualification were discovered. Questions of timeliness of the motion require a factual determination making that issue subject to the substantial, competent evidence standard of review under case law interpreting the former version of the rule. *Amato v. Winn Dixie Stores*, 810 So. 2d 979 (Fla.1st DCA 2002).

3. **If the motion is procedurally sufficient, determining legal sufficiency is the next step.**

a. The allegations must meet an objectively reasonable standard. *Hayslip v. Douglas*, 400 So. 2d. 553 (Fla. 4th DCA 1981)(whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial).

b. **If the motion is legally sufficient, the judge shall immediately enter an order granting the disqualification and proceed no further in the**

[3] **This section is new in its entirety.**

action. Such an order does not constitute an acknowledgement that the allegations are true. Rule 2.330(h), Fla. R. Gen. Prac. & Jud. Admin.

c. The judge should not elaborate on the reasons for granting or denying the motion, nor should the court take issue with or otherwise address the facts alleged, no matter how spurious or inaccurate. Rule 2.330(h), Fla. R. Gen. Prac. & Jud. Admin.[4]

NOTE: Once a motion to disqualify is granted, even if granted in error, the court loses jurisdiction. Any subsequent orders by the disqualified judge are void. *Jenkins v. Motorola, Inc.*, 911 So. 2d 196 (Fla. 3d DCA 2005).

Note: Most motions filed will involve an allegation of reasonable fear of bias under Rule 2.330 (e)(1), Fla. R. Gen. Prac. & Jud. Admin., and §38.10, Fla. Stat.

4. **Successive(i.e. "Second Bite at the Apple") Motions for Disqualification.**

As with initial motions, successive motions must meet all of the procedural requirements such as being properly attested, timely, and in writing. However, successive motions for disqualification filed by the same party must meet a stricter, subjective, standard as it relates to perceived bias. *Greenfield v. Northcutt*, 22 So. 3d 849 (Fla. 3d DCA 2009). Successive judges can only be disqualified if there is a finding that they cannot, in fact, maintain impartiality. *Id.* Unlike initial motions for disqualification, successive judges may comment on the truth or falsity of the allegations. *Id.*, Rule 2.330(i), Fla. R. Gen. Prac. & Jud. Admin. This rule applies only to successor judges and not to successive *motions* to disqualify the *same* judge. *J & J Indus. v. Carpet Showcase*, 723 So. 2d 281 (Fla. 2d DCA 1998).

The 2021 amendments to the Rule also made a small, but important, change in terminology. The Rule now states that a successor judge "cannot" be disqualified unless he or she rules that they are in fact not fair or impartial.

Successive motions for disqualification are reviewed under an abuse of discretion standard. *King v. State*, 840 So. 2d 1047 (Fla. 2003); *Quince v. State*, 732 So. 2d 1059 (Fla. 1999); Rule 2.330(i), Fla. R. Gen. Prac. & Jud. Admin.

---

[4] *See M.D. Parker Associates, Inc. v. Connor*, 339 So. 3d 375 (Fla. 4th DCA 2022) (Ciklin, J., dissenting); *see also, Wagner v. State*, 342 So. 3d 712 (Fla. 2d DCA 2022).

5. **NEW** 2021 amendments to the Rule added a provision that prevents parties from creating a conflict by retaining substitute or additional counsel. This section provides that:

"Upon the addition of new substitute counsel or additional counsel in a case, the party represented by such newly appearing counsel is prohibited from filing a motion for disqualification of the judge based upon the new attorney's involvement in the case. This subdivision shall not apply, however, to a motion to disqualify a successor judge who was not presiding at the time of the new attorney's first appearance in the case." Rule 2.330(f), Fla. R. Gen. Prac. & Jud. Admin.

STATUTORY BASIS FOR DISQUALIFICATION:

The two statutory provisions dealing with disqualification are §38.02, Fla. Stat., and §38.10, Fla. Stat. Section 38.02, Fla. Stat., pertains to mandatory disqualification based on familial or witness relationship and is the statutory counterpart to Rule 2.330 (e)(2-4), Fla. R. Gen. Prac. & Jud. Admin. Section 38.10, Fla. Stat. pertains to disqualification based upon a reasonable concern as to the judge's bias and is the statutory counterpart to Rule 2.330 (e)(1), Fla. R. Gen. Prac. & Jud. Admin.

Section 38.02, Fla. Stat. (Familial/Financial Relationships):

Judge May Comment on the Allegations

If a party seeks to disqualify the judge based on § 38.02, Fla. Stat., they may file a suggestion of recusal. The judge may require the filing in the cause of affidavits touching the truth or falsity of such suggestion. **The judge may then comment on and determine the truth or falsity of the suggestion.** If the judge finds that the suggestion is false, they shall enter the order so stating and declaring themself to be qualified in the cause. A party must file the suggestion within 30 days of learning the information at issue or else the issue is deemed waived. **NOTE**: This deadline differs from the Rule in that the Rule provides a litigant 20 days to file a motion to disqualify after discovering the factual basis. Case law indicates that procedural rules govern the process of disqualification whereas the statute confers the substantive right to disqualify; therefore, the requirements of the Rule control. *E.g. Livingston v. State*, 441 So. 2d 1083 (Fla. 1984)

Section 38.02, Fla. Stat., requires the following:

- If the truth of the suggestion appears in the record, the judge should enter an order stating the grounds of the suggestion, with a declaration of disqualification from the case.

- If the truth of the suggestion does not appear in the record, the judge may order the filing of affidavits touching the truth or falsity of such suggestion.

- If the judge finds that the suggestion is true, he or she shall forthwith enter an order reciting the ground of his or her disqualification and declaring himself or herself disqualified in the cause; or

- If the judge finds that the suggestion is false, he or she shall forthwith enter the order so reciting the falsity and declaring himself or herself to be qualified in the cause.

Section 38.10, Fla. Stat. (Bias):

This provision states:

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.

Distinction between § 38.02, Fla. Stat., and § 38.10, Fla. Stat.

The First District Court of Appeal summed up the differences in the treatment of the two kinds of motions: "Section 38.02 contemplates that the judge will determine the truth of the suggestion to disqualify. This is in contrast to a motion for disqualification for prejudice under section 38.10 where the judge may not pass on the truth of the allegations." *Douglass v. Douglas*, 633 So. 2d 1166 (Fla. 1st DCA 1994).

WHO GETS AN ADVERSE RULING "DO-OVER?"

Successor Judges. Orders entered by a disqualified judge are voidable, but not void as a matter of right. *See Schlesinger v. Chemical Bank*, 707 So. 2d 868 (Fla. 4th DCA 1998). If you are the judge assigned a case after a colleague is disqualified, the parties may file motions for reconsideration of previous factual or legal rulings made by the disqualified judge. Rule 2.330(j), Fla. R. Gen. Prac. & Jud. Admin. "The purpose of reconsideration by a successor judge of the original judge's orders after recusal is to remove the taint of prejudice where rulings might be perceived as so tainted; it should not be used merely to obtain a second bite at the apple with respect to prior judicial rulings." *Rath v. Network Marketing, L.C.*, 944 So.2d 485 (Fla. 4th DCA 2006), rehearing denied, review denied 958 So. 2d 920; *see also, Ogenovic v. Giannone*, 184 So.3d 1135 (Fla. 4th DCA 2015) (In determining whether to reconsider or vacate the rulings of a disqualified judge, the successor judge must consider whether the rulings work an injustice on the party as well as the effect of reconsideration of a multitude of rulings on the administration of justice.).

Unless there is good cause shown, all reconsideration motions must be filed within **30** days of the date of the disqualification order. *See Weiss v. Berkett*, 907 So. 2d 1181 (Fla. 3d DCA 2005) (appellant not entitled to reversal of the denied reconsideration motion as the motion was untimely filed).

NOTE: Section 38.07, Fla. Stat., specifically addresses a party's right to rehearing on prior orders of a disqualified judge:

"When orders have been entered in any cause by a judge prior to the entry of any order of disqualification under s. 38.02 or s. 38.05, any party to the cause may, within 30 days after the filing in the cause of the order of the chief judge of the circuit or the Chief Justice of the Supreme Court, as provided for in s. 38.09, petition the judge so designated for a reconsideration of the orders entered by the disqualified judge prior to the date of the entry of the order of disqualification. Such a petition shall set forth with particularity the matters of law or fact to be relied upon as grounds for the modification or vacation of the orders. Such a petition shall be granted as a matter of right."

NOTE: This right *only* applies if the disqualification was mandatory due to the judge's party or witness status, or familial relationship with a party or attorney under § 38.02, Fla. Stat. Attorneys may incorrectly cite this statute as blanket authority for a "mandatory" rehearing when the prior judge was actually disqualified for bias and not under the provisions in § 38.02, Fla. Stat.

Section 38.02, Fla. Stat., requires disqualification due to the judge or a person related to the judge, being a party in the case, or interested in the outcome; when the judge is related to an attorney of record, or is a material witness in the case. Section 38.05, Fla.

Stat., states that a judge may disqualify himself or herself where any of the grounds for a disqualification named in § 38.02, Fla. Stat., exist.

*Therefore, litigants are NOT entitled to a rehearing (as a matter of right) based on a disqualification under § 38.10, Fla. Stat. (perception of bias or prejudice).

Section 3

When to Recuse Yourself from a Case

Investigate early any questions that may arise and recuse yourself early using the Canons as a guide to determine 1) whether it is mandatory or 2) whether it is appropriate given the circumstances. Ask yourself questions and honestly evaluate the answers.

Some questions to ask:

Do you have personal knowledge of disputed evidentiary facts concerning the proceeding?

Did you serve as a lawyer or lower court judge in the matter or did a law partner you practiced with serve on the case?

Do you have a personal bias or prejudice concerning a party, a witness, or a party's lawyer that may affect your objective decision making?

Do you or any of your family members have an economic interest or substantial stake in the outcome of the case?

Are some of your family members parties to the case? Is one of the lawyers a family member?

Did a lawyer or party help your judicial campaign? Did they help your opponents' campaign?

Is a lawyer your former opponent or potentially a future opponent in a judicial campaign?

Is there an objective appearance of impropriety if you preside over the case?

DUTY TO DISCLOSE VS. DUTY TO DISQUALIFY

The duty to disclose is broader than the duty to disqualify. Disclosure should always be on the record or in writing. The commentary to Canon 3E(1) states that a judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is not a real basis for disqualification.

1. The commentary to Canon 3E(1) states, if a judge makes a disclosure, it <u>is not</u> necessarily a basis for disqualification.

2. Pre 1995, there was a presumption that if a matter was important enough to require disclosure, it would constitute a sufficient factual basis to support a motion to disqualify under Rule 2.330 (former 2.160), Fla. R. Gen. Prac. & Jud. Admin. *See, W.I. v. State*, 696 So. 2d 457 (Fla. 4th DCA 1997) (Judge not required to disqualify upon disclosure that she had a friendship with juvenile's caseworker).

Consider what your course of action will be if you disclose information that you do not think requires disqualification or recusal, but a party moves to disqualify you nonetheless. [5]

Parties May Waive Their Right to Disqualify: "REMITTAL"

CANON 3F, FLA. CODE OF JUD. CONDUCT

REMITTAL: A judge disqualified by the terms of Canon 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding. Canon 3F, Fla. Code Jud. Conduct.

As a practical matter a judge may wish to have all parties and their lawyers sign the remittal agreement although the commentary indicates that parties may act through counsel if counsel represents on the record that the party has been consulted and consents. Canon 3F, Fla. Code Jud. Conduct, Commentary.

[5] *See In re Frank*, 753 So. 2d. 1228 (Fla. 2000); *see, also,* Fla. JEAC-Op. 12-02 ("Our Supreme Court has made clear that different standards should govern for disqualification and disclosure.").

Section 4

Case Law

Summaries of Relevant Case Law

Many reasons exist as to why judges should grant a disqualification motion or recuse themselves from a case. There are an equal or greater number of frivolous reasons offered as a basis for disqualification that are used as a delay tactic or negotiation tool.

ISSUE:

Motion not in writing

A motion for disqualification must be in writing. The court must afford a party the opportunity to put the motion in writing. Ore tenus motions cannot suffice. *Rogers v. State*, 630 So. 2d 513 (Fla. 1993). Ore tenus motion during trial denied on the record and attorney never asked court for continuance to file a written motion. *Forrest v. State*, 904 So. 2d 629 (Fla. 4th DCA 2005).

Denial of motion proper as attorney did not file a written motion following the ore tenus motion to "recuse" during a hearing. *Migliore v. Migliore*, 792 So. 2d 1276 (Fla. 4th DCA 2001).

Unsworn/Inadequate oath/Insufficient or missing affidavit

The motion failed to include appellant's sworn signature or proper affidavit/sworn statement of facts. *Santisteban v. State*, 72 So. 3d 187 (Fla. 4th DCA 2011); *Hip Health Plan of Fla., Inc. v. Griffin*, 757 So. 2d 1272 (Fla. 4th DCA 2000).

No attorney certificate of good faith

Santisteban v. State, 72 So. 3d 187 (Fla. 4th DCA 2011). Reversed and remanded for resentencing on other grounds. The motion failed to include the attorney's separate certification that the motion and the client's statements were made in good faith.

Berkowitz v. Rieser, 625 So. 2d 971 (Fla. 2d DCA 1993). The motion was legally insufficient because it did not contain a certificate of good faith.

Untimely/Failure to serve court with motion

Harrison v. Johnson, 934 So. 2d 563 (Fla. 1st DCA 2006). The 30 day clock to enter a ruling does not begin to run until the moving party served the judge with a copy of the motion.

People Against Tax Revenue Mismanagement v. Reynolds, 571 So. 2d 493 (Fla. 1st DCA 1990). "If plaintiffs believed the judge assigned to their case was not impartial, they should have thoroughly and promptly investigated the grounds for disqualification and presented them all in a timely motion" rather than piecemeal.

Marquez v. State, 11 So. 3d 975 (Fla. 3d DCA 2009). Because the defendant failed to include a certificate of service reflecting service on the trial judge, the petition for writ of prohibition had to be denied.

Inphynet Contracting Services, Inc. v. Soria, 37 So. 3d 299 (Fla. 4th DCA 2010). Filing a motion to disqualify within 10 days of becoming "convinced" the judge is biased does not comply with the law. Incidents occurring over several years does not create a reasonable fear of bias unless those incidents just became known to the movant. Exaggeration and innuendo will not support a motion to disqualify.

Hendrick v. State, 6 So. 3d 688 (Fla. 4th DCA 2009). The defendant never served the trial judge with any of the motions for disqualification filed. Ergo, the 30 day time limit did not apply.

Carter v. Howey, 707 So. 2d 906 (Fla. 5th DCA 1998). The motion did not identify dates of alleged improper statements made by the judge at several pretrial hearings and the record showed the last pretrial hearing was conducted 31 days prior to the filing of the motion to disqualify.

Time Warner Entertainment Co. v. Baker, 647 So. 2d 1070 (Fla. 5th DCA 1994). Denial of the motion proper because it was filed more than one month after the moving party discovered the supporting ground.

What are Sufficient facts?

Attorney supported judge/judge's opponent during campaign

Zaias v. Kaye, 643 So. 2d 687 (Fla. 3d DCA 1994). Substantial participation in campaign may require recusal, whereas financial contributions or limited support may not.

Neiman-Marcus Group, Inc. v. Robinson, 829 So. 2d 967 (Fla. 4th DCA 2002). Disqualification required where attorney served as treasurer for judge's recent re-election campaign. *[NOTE: Even appellate courts use the terms disqualification and recusal interchangeably. Recusal is the correct term in this case.]*

MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 (Fla. 1990). The fact that an attorney made a $500 contribution to the judge's political campaign does not, in itself, require disqualification—writ of prohibition granted on other grounds—judge impermissibly commented on the veracity of the allegations.

Oak Casualty Ins. v. Travelers Ins. Co., 750 So. 2d 704 (Fla. 3d DCA 2000). The court held that an allegation that the opposing counsel was a member of the judicial nominating commission from which the judge sought nomination was not sufficient to warrant disqualification.

E.I. DuPont de Nemours & Co., Inc., v. Aquamar et al., 24 So. 3d 585 (Fla. 4th DCA 2009). Writ of Prohibition denied. Statutorily permitted campaign contributions to the judge by the opposing law firm (totaling $4650) did not create an objective fear of bias.

Judicial Ethics Advisory Committee Opinion No. 2007-17, Issued November 15, 2007. "Whether a judge should disclose to the state when a criminal defense attorney appearing before the judge is currently on the judge's campaign committee. **ANSWER**: Yes.

Whether a judge should recuse himself or herself when a criminal defense attorney appearing before the judge is currently on the judge's campaign committee. **ANSWER**: Not necessarily."

Dell v. Dell, 829 So. 2d 969 (Fla. 4th DCA 2002). The non-moving party's attorney was one of six committee members actively campaigning for the judge's re-election (distinguished from endorsement). The more substantial and contemporaneous involvement of the attorney required the court's recusal.

Caleffe v. Vitale, 488 So. 2d 627 (Fla. 4th DCA 1986). Attorney appearing before the judge while actively managing judge's reelection campaign necessitated recusal.

Caperton v. Massey Coal Co., Inc., 556 U.S. 868, 129 S. Ct. 2252 (2009). During the pendency of an appeal from a $50 million verdict, an election of the supreme court judges ensued. A party contributed over $3 million to the political organization supporting one of the candidates, who unseated the incumbent by a narrow margin after exponentially outspending all other opponents—the bulk of those funds coming directly from the party to the appeal. The U.S. Supreme Court concluded "there is a serious risk of actual bias-based on objective and reasonable perceptions-when a person with a personal stake in a particular case had a significant and disproportionate

influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.* at 2263-4.

Cini v. Cabezas, 343 So. 3d 1282 (Fla. 3d DCA 2022). Allegations of opposing counsel's law firm co-hosting fundraiser for judge during re-election campaign did not require disqualification of the judge.

Personal bias

Aberdeen Property Owners Assoc., Inc., v. Bristol Lakes Homeowners Assoc., Inc., 8 So. 3d 469 (Fla. 4th DCA 2009). Writ of Prohibition granted. The movant discovered the trial judge had actively voiced opposition in the judge's own personal homeowner's association dispute. The facts of movant's lawsuit were substantially similar to those involving the trial judge and his association. Disqualification became necessary since a reasonably prudent individual could fear the trial court's own personal bias would interfere in the proceedings.

Kersaint v. State, 15 So. 3d 41 (Fla. 3d DCA 2009). The appellate court granted the appellant's petition for writ of prohibition finding the original motion should have been granted. Before the sentencing hearing, the trial judge ordered the presentence investigation. Prior to the investigation, the trial judge inquired about defendant's score for sentencing. The defendant's score placed him in the non-state prison category or less than 365 days incarceration. The trial judge then stated he wanted the defendant to serve at least four years in prison and refused to consider time served of two years awaiting trial. These statements indicated a reasonably objective fear that defendant would not receive an unbiased sentence from the trial judge.

Colarusso v. Colarusso, 20 So. 3d 985 (Fla. 3d DCA 2009). Writ of Prohibition granted. The trial court's expression of negative views of the petitioner's behaviors during the dissolution of marriage met the objective standard requiring disqualification.

Blake v. Waks, 11 So. 3d 976 (Fla. 3d DCA 2009). Writ of Prohibition granted. The trial court's statement that it could not trust the petitioner to distribute the estate to the principals had no basis in the record. As such, disqualification was necessary.

Miami Dade College v. Turnberry Invs., 979 So. 2d 1211 (Fla. 3d DCA 2008). Writ of Prohibition granted. The trial court's exchanges on the record with counsel and various statements that the movant would financially suffer from litigation were sufficient to require disqualification.

NRD Invs., Inc. v. Velazquez, 965 So. 2d 304, 305 (Fla. 3d DCA 2007). Writ of Prohibition granted. The trial court expressed displeasure with the case and decided it was willing to enter a final judgment against the plaintiff early on in the case. The totality of the record evidenced a legally sufficient fear of partiality against the movant.

Personal Conduct of the Judge

Moskowitz v. Moskowitz, 998 So. 2d 660 (Fla. 4th DCA 2009). The parties were engaged in a contentious divorce that included allegations of drug use by the mother. In between trial days, the police arrested the judge in a local park for possession of marijuana. The trial court denied the husband's motion for disqualification. The motion should have been granted because the movant held an objectively reasonable fear of bias that the judge would not consider wife's drug use in its decisions, when the same judge had simultaneously pending drug possession charges.

Williams v. Balch, 897 So. 2d 498 (Fla. 4th DCA 2005). Writ of Prohibition granted. Trial court's comments and questions about parties' now married and pregnant 14 year old daughter demonstrated a shift in roles from neutral arbitrator towards advocate for the father.

J.E.A.C. Op. 2023-1, February 1, 2023. Civil judge who presides over insurance-related cases and who filed an insurance claim following Hurricane Michael should 1) disclose to all insurance-related litigants in their division of the judge's filing of a hurricane-related insurance claim; and 2) recuse themselves from any cases involving the same insurance company with whom the judge's claim is pending. If the judge's claim settles, there should be disclosure of the existence of the insurance claim and its settlement for a reasonable period of time after its occurrence due to the direct dealings between the judge and the insurance company. If the judge is represented by an attorney, and that attorney comes before the judge on either a contested or uncontested matter, the judge must automatically recuse himself or herself for a reasonable period of time after the representation ends.

Interaction with Judicial Staff

Alleged animosity between judicial assistant and one of attorney's employees insufficient for disqualification. *Nudel v. Flagstar Bank, FSB*, 52 So. 3d 692 (Fla. 2010). *Leone v. F.J.M. Constr.* 911 So. 2d 1285 (Fla. 1st DCA 2005)

J.A.'s notification to pro se litigants that they were prohibited from any further contact whatsoever with the judge or his staff was sufficient to warrant disqualification. *Madura v. Turosienski*, 901 So. 2d 396 (Fla. 2d DCA 2005)

Derogatory Comments about counsel/parties

Marshall v. Bookstein, 789 So. 2d 455 (Fla. 4th DCA 2001). Disqualification should have been granted where Court expressed its displeasure with trial counsel during the morning motion calendar "angrily denouncing their 'tactics' and deriding them as substandard Miami lawyers who 'may get away with this in Miami but not up here'."

Pugliese v. Deluca, 207 So. 3d 974 (Fla. 4th DCA 2016). Judge referring to litigants as "our Italian folks" was unnecessary and improper, however, it was *not* legally sufficient to base the motion to disqualify on that comment alone.

Cannon v. U.S. Bank Nat. Ass'n, 171 So.3d 133 (Fla. 4th DCA 2015). The level of animosity in between the judge and the petitioner's lawyer based upon the facts in the motion, which are not merely based upon adverse rulings, is sufficient to create an objectively reasonable fear by petitioners that the judge is so biased against their attorney as to require his disqualification.

Prior Orders of Disqualification Entered

Shands Teaching Hospital & Clinics, Inc. v. Samuel, et al., 926 So. 2d 441 (Fla. 1st DCA 2006). Writ of Prohibition granted. Trial court erred in denying motion for disqualification in all cases involving Shands. During a trial, the court commented he believed Shands employed questionable litigation tactics in all their cases, not just the case at trial. The court granted Shands's motion to disqualify in the case at trial expressly finding the motion was legally sufficient. The court denied Shands's disqualification motions in other cases pending before the court. Disqualification was necessary in all cases because the court expressly stated his concerns spanned all cases involving Shands.

Walls v. State, 910 So. 2d 432 (Fla. 4th DCA 2005). When the court feels it is necessary to recuse himself from an attorney's case because of friendship with the attorney then he should do so in all, not just some, cases. "We think the same holds as true for adversarial relationships as it does for friendships." *Id.* at 433.

Walls v. State, 910 So. 2d 432 (Fla. 4th DCA 2005). Writ of Prohibition granted. Trial court erred in denying motion for disqualification. The judge granted a disqualification motion involving trial counsel in an unrelated case. Within 10 days of the disqualification, trial counsel filed the same motion in the instant case citing to the acrimony between court and counsel and the court's previous disqualification in another case. The court denied the motion. Given what prompted the first disqualification, and that the motions were similar, the court should have granted the motion given that the bias surely existed just a few days after the first order.

Assistance provided to attorney/party during a hearing ("Stay in Your lane")

Seago v. State, 23 So. 3d 1269 (Fla. 2d DCA 2010). Writ of Prohibition granted. It is the duty of trial counsel, not the court, to use a witness's deposition to refresh recollection or impeachment. "By intentionally ignoring the opportunities that would have operated to brake its inquiry, the trial court was able to 'make sure that this [was] the right witness that ha[d] given a deposition.' However, that duty rested with respective trial counsel, not with the trial court. The latter's force of inquiry was an improper entry into the fray." *Id.* at 1271.

Wright v. Wright, 260 So. 3rd 494 Fla. 5th DCA 2018) Court made comments to attorney for husband in a temporary relief hearing suggesting he file certain motions and dissuading him from amending pleadings, creating an appearance of favoring one party and requiring disqualification.

Blackpool Assocs. v. Sm-106, Ltd., 839 So. 2d 837 (Fla. 4th DCA 2003). Court assisted attorney during litigation.

Chastine v. Broome, 629 So. 2d 293 (Fla. 4th DCA 1993). The judge passed along a note during trial to the prosecutor saying "sometimes it is better not to cross-examine witnesses." Though the judge explained he would help the defense with trial tips also, disqualification was necessary because the taint of bias against the defendant existed.

Leigh v. Smith, 503 So. 2d 989 (Fla. 5th DCA 1987). Allegations the judge "signaled" to an attorney (alleged to be a close friend) when to object during a hearing raised sufficient questions of bias necessitating disqualification.

Previous JQC/Bar complaint

The Commentary to Canon 3E(1) states: "If a lawyer or a party has previously filed a complaint against the judge with the Judicial Qualifications Commission, that fact does not automatically require disqualification of the judge. Such disqualification should be on a case-by-case basis."

Levine v. State, 650 So. 2d 666 (Fla. 4th DCA 1995). Order denying motion for disqualification reversed and remanded. The judge offered to forgo a show cause proceeding if the attorney would not bill the county the $1,000 special public defender's fee in another criminal case. The attorney refused and the attorney's firm then filed a JQC complaint. The filing of the JQC complaint together with the court's offer to drop the contempt citation showed a reasonable fear that the attorney could not receive a fair trial on the subsequently adjudicated contempt order.

Holding a defendant in contempt does not require disqualification, unless the judge becomes personally involved in the conflict. *Oates v. State*, 619 So. 2d 23 (Fla. 4th DCA 1993)

A judge's reporting of an attorney's perceived unprofessional conduct to the Florida Bar, in and of itself, is insufficient to support disqualification. *5-H Corp. v. Padovan*o, 708 So. 2d 244 (Fla. 1997). *Birotte v. State*, 795 So. 2d 112 (Fla. 4th DCA 2001).

Mongelli v. Florida Health Sciences Center, Inc., 339 So. 3d 480 (Fla. 2d DCA 2022). A trial court judge may refer a lawyer perceived as discourteous to a local professionalism panel without concern that he or she, by that action alone, will be subject to disqualification.

BUT SEE: *Samra v. Bedoyan*, 299 So. 3rd 1138 (Fla. 3d DCA 2020) Although a judge's adverse rulings or factual findings cannot ordinarily serve as a basis to seek disqualification, under the unique circumstances of the case, the judge's imposition of sanctions for "egregious conduct" by attorneys created well-founded fear that party would not receive a fair trial.

Filing a suit in federal court against a judge is a legally insufficient basis for the judge's disqualification. *May v. South Florida Water Management District*, 866 So. 2d 205 (Fla. 4th DCA 2004).

Defendant had a reasonable fear of personal prejudice by the trial judge. Defendant's attorneys had filed bar complaint against the judge while she was a state prosecutor and attempted to prevent her appointment to the bench, resulting in acrimony between judge and attorneys. The allegations involved matters beyond the mere reporting of unprofessionalism. *Siegel v. State*, 861 So. 2d 90 (Fla. 4th DCA 2003).

Ex parte communications/off the record statements

Albert v. Rogers, 57 So. 3d 233 (Fla. 4th DCA 2011). Trial court's order on contempt reversed and remanded for re-assignment. After a family law contempt hearing, the judge independently contacted the children's school for information. Father claimed he was not the secondary emergency contact at the school. Mother testified he was listed. The school confirmed to the judge the father was not on any contact list. The judge then expressly relied on this information in the ruling finding the mother in contempt. Mother's fundamental due process rights were denied to her because the judge instigated an independent investigation.

Judge's consideration of extra-record information by performing his own research was improper but did not require disqualification where the actions did not indicate bias. *Krawczuk v. State*, 93 So. 3d 195 (Fla. 2012).

City of Hollywood v. Witt et al., 868 So. 2d 1214 (Fla. 4th DCA 2004). Writ of Prohibition granted. Trial court erred in its denial of motion to disqualify. Sworn affidavit of attorney alleged trial judge made comments, after jury verdict, to another attorney in the presence of others that he thought the City's witnesses "lied" and that defenses at trial were not believable.

Isan v. Isan, 209 So. 2d 40 (Fla. 5th DCA 2016). Holding that trial judge who engaged in ex parte communication with respondent on several occasions before entering a final judgment nearly identical to respondent's proposed final judgment including waiving attorney's fees was enough to demonstrate that a reasonably prudent person would be in fear of not receiving a fair and impartial hearing.

Masten v. State, 159 So.3d 996 (Fla. 3d DCA 2015) – recusal was warranted when trial judge sent 21 paragraph email containing various arguments to party, as this was an ex parte communication, judge also erred by filing a response which suggested she held both personal interest in the appeal of the stay.

Menada, Inc. v. Arevalo, 341 So. 3d 1189 (Fla. 3d DCA 2022) (quoting *Rose v. State*, 601 So. 2d 1181, 1183 (Fla. 1992). "The most insidious result of ex parte communications is their effect on the appearance of the impartiality of the tribunal."

Relationship between judge and party/attorney/witness

Wickham v. State, 998 So. 2d 593 (Fla. 2008). Trial court's denial of 3.850 motion (which included a request to disqualify all judges in the Circuit) reversed and remanded for the temporary re-assignment to a judge outside the Circuit to adjudicate the 3.850 motion. A circuit judge had represented defendant during the initial murder trial. He later was appointed to the Court of Appeal in the same jurisdiction. Because defendant alleged in his motion ineffective assistance of counsel (specifically the judge) and because the judge's wife is also a judge in the same jurisdiction, the defendant has a reasonable fear the entire Circuit would be biased against him.

Mines v. Countrywide Home Loan, Inc., 31 So. 3d 820 (Fla. 1st DCA 2010). Petition for Writ of Prohibition granted. The judge received a favorable interest rate in his personal dealings with a close corporate affiliate of Countrywide. This interest rate was not available to the general public.

Stevens v. Americana Healthcare Corp., 919 So. 2d 713 (Fla. 2d DCA 2006). Writ of Prohibition granted. The court voluntarily disclosed a relationship with three witnesses. The disclosure in and of itself did not require recusal/disqualification. The court went further to invite motions for disqualification and discussed with the attorneys what would be contained within the order of recusal. After the party filed the motion for disqualification, the court denied the motion. "[A] judge should not offer to recuse himself or herself based on a voluntary disclosure of information relevant to the question of disqualification unless the judge means it." *Id.* at 716.

W.I. v. State, 696 So. 2d 457 (Fla. 4th DCA 1997). Writ of Prohibition granted. The presiding judge, during her time as a prosecutor, prosecuted the juvenile defendant on unrelated charges. This past relationship supported a reasonable fear of not receiving a fair trial.

Contested truthfulness of allegations/Non-moving party contests facts on court's behalf

Bundy v. Rudd, 366 So. 2d 440 (Fla. 1978). The judge's comments on the veracity of Bundy's motion for disqualification created "'an intolerable adversar[ial] atmosphere' between the trial judge and the litigant." *Id.* at 442 (citations omitted).

D.H. v. Dep't of Children and Families, 12 So. 3d 266 (Fla. 1st DCA 2009). Final judgment of termination of parental rights reversed and remanded for reassignment to another trial judge. The mother of the child was a former foster child well known to the trial court. DCF filed a TPR petition that alleged the mother's mental health prevented reunification. During the pre-trial conference, the trial court stated it was very familiar with the mother's mental health history. Knowledge of facts in and of itself is not a basis for disqualification. However, in the written order, the trial court attempted to refute the allegations contained in the motion.

Hill v. Feder, 564 So. 2d 609 (Fla. 3d DCA 1990). The trial judge commented the allegations were "in fact, totally false".

Kielbania v. Jasberg, 744 So. 2d 1027 (Fla. 4th DCA 1997). Writ of Prohibition granted. During a hearing on the motion for disqualification, the court explained some issues raised in the allegations, entered documents into evidence, and interjected comments.

Martin v. State, 804 So. 2d 360 (Fla. 4th DCA 2001). Petition for Writ of Prohibition granted. Trial court erred in its denial of motion to disqualify and inappropriately commented on the allegations in the motion thereby placing the court in an adversarial role with the defendant. Affidavit by defendant and copy of news article alleged bias because of the court's comments in a newspaper article that anyone sentenced to incarceration should also always be on probation after release. Judge confirmed his nickname "Judge Follow-By" was appropriate. The allegations created a reasonable fear in defendant that he would receive probation no matter the circumstances.

Written order not timely issued

Tableau Fine Art Group, Inc. v. Jacoboni, 853 So. 2d 299 (Fla. 2003). Created bright-line time limit to issue order on motion for disqualification.

Lightsey v. State, 53 So. 3d 1093 (Fla. 1st DCA 2011). Because the judge failed to rule upon on properly served disqualification motion within requisite time, the motion was automatically granted.

Schisler v. State, 958 So. 2d 503, 505 (Fla. 3d DCA 2007). Because the court issued its ruling 32 days after service of the motion, disqualification was required.

Johnson v. State, 968 So. 2d 61 (Fla. 4th DCA 2007). Timeliness rule applies to successor judges as well.

Santa Catalina Town Homes v. Mirza, 942 So. 2d 462 (Fla. 4th DCA 2006). Holding that the motion was deemed to have been granted as time to rule had passed.

G.C. v. Dep't of Children and Families, 804 So. 2d 525, 526 (Fla. 5th DCA 2002). Stating that neither sending a gentle reminder to the judge nor applying for a writ of mandamus "is a burden that should be placed on the movant. The rule places the burden on the judge to rule and the litigant should not be required to nudge the judge. Nor is it right to require a party to file a petition for writ of mandamus."

Compare Tobkin v. State, 889 So. 2d 120 (Fla. 4th DCA 2004). Trial court's failure to rule within 30 days after motion was filed did not require automatic removal because: (1) clerk's office did not forward the motion to the judge, (2) movant sent the judge's copy to the wrong address, and (3) judge ruled within six days after being notified of the pending motion, and one day after actual service.

Public statements on issues

Hayes v. State, 686 So. 2d 694 (Fla. 4th DCA 1996). Judge disqualified for publicly announcing how he would sentence similarly-situated defendants regardless of evidence or argument. *See also Martin v. State*, 804 So. 2d 360 (Fla. 4th DCA 2001).

Judge's comments at a council meeting condemning domestic violence was legally insufficient basis for disqualification. *Rodgers v. State*, 948 So. 2d 655 (Fla. 2006).

Acrimony between judge and attorney

Siegel v. State, 861 So. 2d 90 (Fla. 1st DCA 2003). Lengthy, documented history of acrimony and personal attacks between judge and counsel warranted disqualification.

Wicklund v. Schoff, 755 So. 2d 192 (Fla. 1st DCA 2000). The trial court sent a letter to the attorney stating "I have a low regard for your approach to the practice of law." The letter together with the history of acrimony between the parties required disqualification.

Gonzalez v. State, 896 So. 2d 965 (Fla. 4th DCA 2005). Writ of Prohibition granted. Trial court erred in its denial of motion to disqualify. In 2001, the trial counsel, who was at that time an assistant state attorney, witnessed the court telling a defense attorney that it "could not stand the sight of" him and that he "had no integrity." Clients of trial counsel in 2004 could have a reasonable fear of not receiving a fair trial because of the court's statements made three years prior.

City of Lakeland v. Vocelle, 656 So. 2d 612 (Fla. 1st DCA 1995). Writ of Prohibition denied. Grounds of acrimony between trial court and counsel alleged in movant's affidavit were stale and unable to support disqualification.

Hhh'hing v. State, 917 So. 2d 1009 (Fla. 4th DCA 2006). Fact that a defense attorney has gone public with complaints about a judge does not in and of itself warrant disqualification.

Milmir Construction v. Jones, 626 So. 2d 985 (Fla. 1st DCA 1993). Writ of Prohibition denied. Trial counsel previously opposed the court's appointment as a judge of compensation claims and the judge admitted calling trial counsel a "scumball." Just over one year had passed at the time trial counsel filed the motion for disqualification alleging bias based on their history. The appellate court agreed with the court that the grounds were stale and could not support disqualification.

The reason of bad blood between judge and attorney can go stale.

Bert v. Bermudez, 95 So. 3d 274 (Fla. 3d DCA 2012). Writ of Prohibition denied. Lawyers' theatrics during a hearing that resulted in the trial judge repeatedly admonishing the attorneys did not support disqualification. Trial judges have the right and obligation to control the courtroom. "To require disqualification of a judge whenever a [ ] lawyer's behavior invokes an invited response by the judge, would encourage the

behavior exhibited at this hearing as a means of 'judge shopping.'" *Id.* at 280 (citations omitted).

Jarp v. Jarp, 919 So. 2d 614 (Fla. 3d DCA 2006). Writ of Prohibition denied. Movant claimed judge and trial counsel had an acrimonious relationship stemming from trial counsel's vocal public objection to the court's fitness to take the bench and heated exchanges between the court and trial counsel just after election to the bench. These incidents occurred in 1984. From that time up until 1993, the court granted trial counsel's motions to disqualify or sua sponte recused itself from trial counsel's cases citing their relationship as the issue. The court held that since the events occurred 20 years ago and no new allegations of bias arose, the issue was stale. "Tempers do cool and anger does dissipate." *Id.* The court's prior removal, without more, does not create an objective fear of bias. To hold otherwise would allow attorneys to have courts serve at their whim. *See also Edwards-Freeman v. State*, 138 So. 3d 507 (Fla. 4th DCA 2014).

Strasser v. Yalamanchi, 783 So. 2d 1087 (Fla. 4th DCA 2001). Questionable statements by trial court not grounds for disqualification as a personal attack on the attorney because statements were "largely unrelated" to the issue before the court and were given before the court had received evidence.

Previous adverse rulings

Thompson v. State, 759 So. 2d 650 (Fla. 2000). "[T]he fact that a judge has ruled adversely to the party in the past does not constitute a legally sufficient ground for a motion to disqualify."

Santisteban v. State, 72 So. 3d 187 (Fla. 4th DCA 2011). Reversed and remanded for resentencing on other grounds. The defendant's actions spawned simultaneous criminal and civil cases. The civil judge volunteered to assist the criminal judge by hearing the criminal trial. The civil judge had extra time and was familiar with the facts. Previously, the civil judge had ruled that there was sufficient negligence to permit the plaintiffs to plead a claim for punitive damages. The defendant claimed a bias existed because of this adverse ruling. Civil judges are not disqualified from presiding over a criminal trial arising from the same incident. "[T]he trial judge's ruling in the civil case was merely the exercise of a legitimate judicial function." *Id.* at 194.

Letterese v. Brody, 985 So. 2d 597 (Fla. 4th DCA 2008). Writ of Prohibition denied. After hearing lengthy argument, the court's comments of "ad nauseum" and "[a] proctologist couldn't have been more thorough than what we did," while blunt, did not create an objectively reasonable fear of bias against the movant. The movant's complaint stemmed from the judge's ruling.

Subjective fears of movant

May Invs., Inc. v. Lisa, S.A., 814 So. 2d 471 (Fla. 3d DCA 2002). "The subjective fears of a party seeking disqualification of a judge are not reasonably sufficient to justify a well-founded fear of prejudice".

Hendrick v. State, 6 So. 3d 688 (Fla. 4th DCA 2009). The speculative, unreasonable, and unsubstantiated beliefs of the defendant that the trial judge was involved in a conspiracy against him were legally insufficient to support a motion for disqualification.

Nassetta v. Kaplan, 557 So. 2d 919 (Fla. 4th DCA 1990). "A judge's remarks that he is not impressed with a lawyer's or his client's behavior are not, without more, grounds for recusal."

5-H Corp. v. Padovano, 708 So. 2d 244 (Fla. 4th DCA 1998). Fear was too "speculative, attenuated, and too fanciful to warrant relief."

T *Brown v. Pate*, 577 So. 2d 645 (Fla. 1st DCA 1991). Trial court's expression of "grave concern" regarding father's visitation did not serve as a basis for disqualification. A judge may form mental impressions and opinions over the course of a case so long as she does not prejudge the merits.

Facebook "Friends"

Law Offices of Herssein & Herssein P.A.. v. United Services Automobile Association, etc., et al., 271 So. 3d 889 (Fla. 2018). Allegation that trial judge is a Facebook "friend" with and attorney appearing before the judge, standing alone, does not constitute a legally sufficient basis for disqualification.

Section 5

Social Media, Professionalism, and the Bench

The advent of technology giving rise to our current culture of instantaneous news and communication required the creation of new cyberspace boundaries between the courts and the rest of the world. Deciding what does or does not violate the Canons can be difficult. The Judicial Ethics Advisory Committee has offered some guidance into what does or does not violate the Canons.

What is a friend?
Judicial Ethics Advisory Opinion 2009-20, issued November 17, 2009

In deciding whether the use of a social networking site is prohibited by Canon 2B or 5A, the following is relevant to that analysis: (1) did the judge establish the social networking page him/herself?, (2) does the judge have the right to accept or reject "friends" or contacts on the judge's page?, (3) are the identities of the judge's "friends" readily accessible or identifiable to others? The committee majority concluded that listing lawyers as "friends" on a judge's social networking page conveys the impression these lawyers are in a "special position to influence the judge." The committee did note a distinction between lawyers that may practice in front of that judge (cannot be friends) versus lawyers who do not (can be friends).

Contrast the above from the same opinion with the following: the use of social networking does not violate the Canons if the judge or campaign committee has no control over who lists the site on their own page as a "fan." In other words, anyone wishing to be listed as a "fan" on the campaign site may do so unilaterally. This includes lawyers that may appear before the judge.

A minority of the committee concluded that the term "friend" as used in cyberspace is ubiquitous to the degree that no one could reasonably believe that an "online friend" had any special influence over a judge. Time will tell if future committees adopt this as a majority view.

Judicial Ethics Advisory Opinion 2010-06, issued March 26, 2010

Presently, there is no cure that will simultaneously allow lawyers to appear before the judge and be social networking "friends." Issuing a disclaimer on the social networking page that anyone listed as a friend on the page does not mean there is a special relationship between the judge and that person is not enough to satisfy the Canons. "The committee rejects any contention that a judge can engage in unethical conduct so long as the judge announces at the time that the judge perceives the conduct to be ethical."

A judge may participate on a subject specific social networking if the judge has no control over who may access that site.

It is an issue that will not go away any time soon, as seen in numerous news articles on the subject.

What about my J.A. (other employees)?
Judicial Ethics Advisory Committee Opinion 2010-04, issued March 19, 2010

Judicial assistants may "friend" lawyers that appear before the judge so long as the judicial assistant makes no reference to the judge or judge's office on the social networking site.

Professionalism & Ethics on and off the Bench
A judge is a judge everywhere, whether it is the grocery store, a child's sports event, or a spouse's work party. Additionally, a judge's demeanor when interacting with staff outside of court is subject to the same scrutiny as their treatment of people in the courtroom.

Things to ask yourself before posting or speaking:

- Would I be embarrassed if this comment/photo were published in the newspaper?
- Does it arguably demean my office?
- How would this read in a transcript/look in a headline?
- Is it really necessary or productive to say/do?

Relationships with J.A's, bailiffs, clerks and court administration.

Your J.A. is your face to the outside world. Make sure you draw clear lines from the beginning as to your expectations of how they will interact with the public and lawyers, and what, if anything, they will say about their job on their own social media.

Your bailiff is your ally and protector in court. Make sure you have a conversation with them about how you want your courtroom to be administered. They have your best interests in mind and want to keep you safe. Their judgment on security issues is usually sound; however, they should be instructed about the professional and respectful way you want your courtroom to appear.

Your clerks and court reporters are there to support and assist you. Always be respectful and courteous and remember to give them regular breaks during large dockets or long hearings.

Court administration exists to support the judiciary. They are not, however, your personal employees or minions who merely carry out your directives. An ill-tempered judge will quickly get a reputation in the courthouse that is almost impossible to shake and will result in staff being less responsive to them. As government employees, judges are constrained by budgets and limited resources. Don't make demands for furniture, technology, or other items you were used to having at your disposal in your practice and berate court administration when they cannot comply.

Section 6

When in doubt, consult the Canons.

A judge's conduct, on and off the bench, is governed by the Canons. In addition to providing guidance on recusal and disqualification issues, they contain standards of behavior that judges must meet.

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.

****

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. *Judicial Duties in General.* --The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

B. *Adjudicative Responsibilities.*

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

(c) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of

court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to parties or classes of parties, cases, controversies or issues likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. *Administrative Responsibilities.*

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. *Disciplinary Responsibilities.*

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. *Disqualification.*

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge's spouse or a person within the third degree of relationship to the judge participated as a lower court judge in a decision to be reviewed by the judge.

(f) the judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) parties or classes of parties in the proceeding;

(ii) an issue in the proceeding; or

(iii) the controversy in the proceeding.

(2) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household.

F. *Remittal of Disqualification.* --A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

***

Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) undermine the judge's independence, integrity, or impartiality;

(3) demean the judicial office;

(4) interfere with the proper performance of judicial duties;

(5) lead to frequent disqualification of the judge; or

(6) appear to a reasonable person to be coercive.

B. Avocational Activities. A judge is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the judicial branch, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive;

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice, including attending, without charge, a bar-related lunch, dinner, or social event; and if the value of attending an individual function or event exceeds $100, the judge shall report it under Canon 6B(2);

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds $100.00, the judge reports it in the same manner as the judge reports gifts under Canon 6B(2).

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator.

(1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.

(2) A senior judge may serve as a mediator in a case in a circuit in which the senior judge is not presiding as a judge only if the senior judge is certified pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators. Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may not advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation, arbitration, or voluntary trial resolution services and shall not permit an entity with which the senior judge associates to do so. A senior judge shall not serve as a mediator, arbitrator, or voluntary trial resolution judge in any case in a circuit in which the

judge is currently presiding as a senior judge. A senior judge who provides mediation, arbitration, or voluntary trial resolution services shall not preside over any case in the circuit where such services are provided; however, a senior judge may preside over cases in circuits in which the judge does not provide such dispute-resolution services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator, arbitrator, or voluntary trial resolution judge by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator, arbitrator, or voluntary trial resolution judge within the previous three years. A senior judge shall disclose any negotiations or agreements for the provision of services as a mediator, arbitrator, or voluntary trial resolution judge between the senior judge and any parties or counsel to the case.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

SELECT COMMENTARY FROM THE CANONS TO CONSIDER

Irresponsible or improper conduct by judges erodes public confidence in the judiciary. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3B(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business, although a judge may use judicial letterhead to write character reference letters when such letters are otherwise permitted under this Code.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

This Canon is not intended to prohibit membership in religious and ethnic clubs, such as Knights of Columbus, Masons, B'nai B'rith, and Sons of Italy; civic organizations, such as Rotary, Kiwanis, and The Junior League; young people's organizations, such as Boy Scouts, Girl Scouts, Boy's Clubs, and Girl's Clubs; and charitable organizations, such as United Way and Red Cross.

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. For that reason, judges are encouraged to participate in extrajudicial community activities.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge, and may undermine the independence and integrity of the judiciary. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of **Canon** 5C(3)(b). It is also generally permissible for a judge to pass a collection plate at a place of worship or for a judge to serve as an usher or food server or preparer, or to perform similar subsidiary and unadvertised functions at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations, so long as they do not entail direct or personal solicitation. However, a judge may not be a speaker, guest of honor, or otherwise be featured at an organization's fund-raising event, unless the event concerns the law, the legal system, or the administration of justice

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

JUDICIAL ETHICS ADVISORY OPINIONS

Although there are few clear cut answers to "Should I recuse myself?" the Judicial Ethics Advisory Committee provides opinions to judges seeking guidance and should be contacted if you are unsure what course of action to take. All JEAC opinions are archived on the 6th Circuit web site: jud6.org.

IMPROPER USE OF JUDICIAL OFFICE

2021-03: Although a judge may write an advocacy letter on behalf of legislation pertaining to autistic children, they may not identify themselves as a judge.

2020-26: A judge's post-judicial employer may not advertise the judge's prospective employment while still a sitting judge. 2A; 2B; 5A.

WORK HABITS

2020-05: The Canons of Ethics do not prohibit a judge from meeting with an attorney to discuss administrative or procedural matters including docket management, scheduling issues and expectations for motion practice, as long as the judge does not discuss any pending or impending cases, engage in ex parte communication and does not create any doubt as to the judge's impartiality. 3B(7)(8)&(9), 4 and 5A(1-6).

2013-13: Judge may not use the judge's former law office, located in the building where the judge's family's law firm continues to practice law, during non-business hours to perform personal and court-related work. This would give the impression that the law firm has close ties with the judge, which could help a client who uses that firm and would also raise confidentiality issues.

JUDICIAL ASSISTANTS

2006-32: Although judicial assistants are not bound by the Code of Judicial Conduct, judge has obligation to direct his or her judicial assistant not to accept employment cleaning the offices of attorneys likely to appear before the judge. Since the judge could not accept such employment because of the appearance of impropriety, it follows that the judge should not allow someone under his or her direction or control to accept such employment.

2010-04: Judge's judicial assistant may add lawyers who may appear before the judge as "friends" on a social networking site, as long as the activity is wholly independent of the judge and does not reference the judge or the judge's office. 2B and 3C(2).

MEMBERSHIPS AND ACTIVITIES

2021-01: A judge may not maintain membership in a voluntary bar that endorses a candidate for public office, regardless of whether it is an appointed or elected position.

2021-02: A judge may serve on the board of an organization where another board member is a partner in a law firm that appears regularly in front of the judge.

2019-26: A judge may not appear in a video to promote the circuit's jail diversion program where the program is facilitated by a private organization that solicits fees and membership. 2B, 5C(3)(b)(iii).

2019-23: Judges may contact State Attorney, Public Defender, or designated supervisory attorneys to discuss concerns regarding lawyers' conduct, but must avoid ex parte communication about pending matters and comments must be delivered in professional, civil manner. 2A; 3B(3), (4), (6), (7); 3D(2); 4A(1-6); 5A(1-6).

2017-08: A judge may serve as a "judge" for preliminary Miss America pageant competitions. The Canons do not prohibit participation at a pageant competition by showcasing a talent, such as singing, subject to Code's requirement that the judge act "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." 2, 2A, 2B, 5A, 5B, 5C(3), Commentary to Canon 2A, Commentary to Canon 5A.

2016-21: A judge may attend the 2017 Presidential Inauguration and may attend the Florida Inaugural Ball being hosted by the Florida State Society.

2017-10: Judge may attend a diversity and racial equality seminar presented by a private organization. Judge shall remain faithful to the law and shall perform judicial duties without bias or prejudice. 3B(2), (5).

2013-03: Judge may not participate in a county elections task force to address issues encountered in the judge's county and throughout the state during a general election. To do so would involve the judge in the political process of the other branches of government. 5C(2), Commentary to 5C(2).

2009-06: Judge may not serve on a local county ethics commission for the purpose of establishing a code of ethics for the county commission because such activity does not involve improving the law, the legal system, or the administration of justice. 4D; 5C(1); and 5C(2) and Commentary to 5.

2008-01: Judge may serve as member of mortgage fraud task force because task force is devoted to improvement of the law, the legal system and the administration of justice; and it would involve no fundraising or promotion of private interests. 4D; 5C(2).

2005-09: Judge may serve as member of the board of a local community children's alliance, on a committee concerning family violence and its reduction, and on committees or organizations chaired by elected officials, even possibly in their election year, as long as these groups are not advocacy groups. 2C, 5A, and 5C(3).

2016-11: An inquiring judge may not serve on a School Advisory Committee for a public elementary school because the committee is a committee concerned with issues of fact or policy unrelated to the law, the legal system, or the judiciary. An inquiring judge may however serve as a board member of a non-partisan political and public affairs organization that functions to inform and educate the community's business, political, and social interests and to promote more active participation of all citizens in the democratic process because a judge may become a member of and attend nonpartisan public awareness organizations.

2013-07: Judge may serve as a college football referee, as long as it does not conflict with judicial duties.

2012-34: Judge may accept an invitation from a university editorial board member to critique a book written by the lead defense attorney of a well-publicized criminal case in which the defendant remains a party in pending proceedings. However, given the restrictions of the Code of Judicial Conduct and the possibility that the publisher or defense attorney would use the critique to advance their private interests, the judge should decline.

2009-04: Judge may serve as an officer of the alumni association of a public university in Florida as long as the office does not involve conduct that violates Canon 5.

2023-1: Civil judge who presides over insurance-related cases and who filed an insurance claim following Hurricane Michael should 1) disclose to all insurance-related litigants in their division of the judge's filing of a hurricane-related insurance claim; and 2) recuse themselves from any cases involving the same insurance company with whom the judge's claim is pending. If the judge's claim settles, there should be disclosure of the existence of the insurance claim and its settlement for a reasonable period of time after its occurrence due to the direct dealings between the judge and the insurance company. If the judge is represented by an attorney, and that attorney comes before the judge on either a contested or uncontested matter, the judge must automatically recuse himself or herself for a reasonable period of time after the representation ends.

GIFTS

2019-19: A judge may accept the gift of a free stay in a hotel suite if the gift is made by a party whose interests have not appeared and are not likely to appear before the judge, if proper disclosure is made.

2017-06: Permissible for the copiers to be donated by a professional association to the court system for the exclusive use and benefit of attorneys in the courtroom. The facts of this inquiry do not involve a gift to any judge or court employee.

2017-04: A judge may allow law-related organizations and a private law firm to jointly host a free post-seminar reception at the judges' courthouse and may accept food/drink provided by the organizations/law firm at the event.

2014-01: It is not acceptance of a "gift" for a judge to permit the use of chambers for the display of art acquired by the local government for display in an art-in-public-places program.

2013-12: General magistrate may accept and use a government rate discount applicable to all attorneys employed by the government for tickets to the local legal aid organization's annual gala, if the general magistrate's conduct does not appear to a reasonable person to cast reasonable doubt on the capacity to act impartially as a general magistrate.

2013-05: Judge assigned to a dependency division may accept donations of items for children to play with while the children are in court, as long as neither the judge nor the judge's court personnel solicits the donations.

PRIOR DEALINGS/RELATIONSHIPS WITH ATTORNEYS

2020-08: A disqualification is required when the judge's brother-in-law is a partner in a large firm whose members may appear before the judge. 3E(1)(a) and (d), 3F.

2019-24: A judge need not disqualify himself or herself from cases involving an insurance company with whom the judge amicably settled a claim, but should disclose that fact to the parties in all cases involving the same insurance company for a reasonable period of time. 3E(1)

2019-07: Disqualification is not required where judge's only business relationship with law firm and attorney who will appear before the judge involved referral of cases to the lawyer and law firm several years ago when the judge was still practicing law. 2, 3, 3E(1), 3E(1)(b), 3E(1)(d)(ii), 5D(1)(b).

2019-17: A judge need not recuse when law partner of judge's spouse assigns the preparation of amicus brief to members of Florida Bar committee. Disclosure is also not required unless the judge's impartiality might be reasonably questioned. 3E(1).

2019-08: A judge need not recuse when law partner of judge's spouse assigns the preparation of amicus brief to members of Florida Bar committee. Disclosure is also not required unless the judge's impartiality might be reasonably questioned. 3E(1).

2019-06: A judge is not automatically disqualified in all cases involving a law firm that employs the judge's child in a part-time, temporary position. Disclosure is also not required unless the judge's impartiality might be reasonably questioned. 3E, 3E(1).

2018-26: A judge is not required to disqualify himself or herself from all criminal cases solely because the judge's child is an attorney employed by the Public Defender, so long as the as the child has no involvement in the cases heard by the judge. The judge is not required to routinely disclose the fact that the child is employed by the Public Defender where the child is assigned to a different division of the court.

2018-22: A judge is not required to automatically disqualify himself/herself from all cases involving a law firm solely because the judge's close relative and that relative's company hire the law firm to represent the company on matters unrelated to any case pending before the judge or lawyer appearing before the court.

2018-13: A judge married to a public defender may preside over the criminal mental health, drug, and veteran diversion courts where the judge's spouse is responsible for the supervision of the public defender's assigned to represent defendants in the respective diversion courts, but should not preside over cases where the judge's spouse is the attorney of record, or cases which the spouse supervises.

2017-21: General magistrate need not recuse himself/herself from presiding over Marchman Act proceedings when a party is represented by an attorney who previously represented the magistrate's brother-in-law in a Marchman Act case before another general magistrate presiding in the same circuit, unless the general magistrate determines that he/she has a personal bias or prejudice. General magistrate is required to disclose the lawyer's representation of the general magistrate's brother-in-law until no reasonable person would consider the information relevant to a determination of the magistrate's impartiality. General magistrate may order a respondent to attend treatment at a particular facility where the magistrate's brother-in-law is a current or former patient. 2 and 3E(1).

2017-20: A judge shall be disqualified if an attorney from a law firm in which the judge's brother-in-law is a partner appears as counsel in a case before the judge, subject to remittitur. A judge may enter an agreed-upon order submitted by the parties appointing the judge's cousin as a mediator, so long as selection of the cousin as a mediator is initiated by the parties. A judge shall not be disqualified if the wife or daughter of the judge's cousin appears before the judge, unless there is a close familial relationship between the judge and the wife or daughter of the judge's cousin such that the judge's impartiality may reasonably be questioned. However, the judge must disclose the relationship when the wife or daughter of the judge's cousin, or a member of their respective law firms, appears before the judge. 3C(4), 3E(1)(d)(i-iv), 3F.

2017-03: Judge must disclose that a lawyer appearing before the judge has referred case to the judge's spouse and that the lawyer may receive a referral fee from judge's spouse. However, the judge is not automatically required to recuse after disclosure. 3E(1), 3E(2).

2016-02: A judge must adamantly and genuinely encourage a law firm not to promote or market the Judge's parent-child relationship with an attorney in the law firm. 2B.

2015-09: Judge may not retain judicial assistant after the judge's child marries the judicial assistant. 2A, 3C(2), 3C(4), 3E(1)(d), Definitions, and Commentary to 3C(4).

2020-23: A judge is not disqualified from involvement in proceedings in which one of the attorneys is a former client of the judge or is a member of a law firm formerly represented by the judge. A judge must disclose for a reasonable time period that an attorney for one of the parties was previously represented by the judge. Canon. 3E.

2017-17: Judge who has recently assumed the bench is not required to self-recuse from presiding over cases involving a party who was until recently a client of the judge unless the judge's impartiality might reasonably be questioned. 2 and 3E(1).

2007-16: A judge is not automatically disqualified in all cases involving a law firm that employs the judge's son-in-law as a part-time law clerk because the son-in-law has no more than a de minimus interest in most proceedings and the judge's impartiality is unlikely to be reasonably questioned. However, disclosure is required, and disqualification might be required if the son-in-law was working on the case in question. The JEAC endorsed a case-by-case analysis .

2005-06: Judge must disclose spouse's business relationship with attorney in matters involving that attorney's firm if, after considering several factors, the judge thinks it possible that a party might reasonably express concern over the judge's ability to remain impartial. However, recusal would not be required unless the judge knows spouse would have more than a de minimis interest in the outcome of the proceeding.

2005-05: Even after four years had passed since judge represented medical center in medical malpractice claims, judge was still required to disclose former attorney-client relationship.

JUDGE AS MANDATORY REPORTER

2019-13: Judges must comply with section 39.201, Florida Statutes (2019) by reporting information regarding child abuse, neglect, etc. Filing such a report does not constitute a prohibited ex parte communication, but no independent investigation is authorized. Judges are not required to use DCF's form when reporting. Recusal may be appropriate in certain circumstances.

PRIOR OR POTENTIAL POLITICAL OPPONENTS/SUPPORTERS

2019-12: Automatic recusal is not required in cases in which the judge's former opponent in a recent, contested election appears as an attorney before the judge, when no recusal request has been made and there is no suggestion of bias, animosity, or other reasons for recusal. A judge's discretion rather than a specified time period governs whether to self-recuse in these circumstances. Any possible future motions to disqualify submitted by a recent former campaign opponent should be given serious consideration.

2018-03: Judge need not recuse based on information that an attorney who regularly appears before the judge is "thinking" of running against the judge. Judge should not inquire of the attorney about plans to challenge the judge during upcoming election.

SOCIAL RELATIONSHIPS

2019-16: A judge need not automatically recuse, but must disclose a romantic relationship with an attorney in cases where one side is represented by the firm that has a limited professional, but not profit-sharing, relationship with that attorney, even though that attorney is not involved in the case.

2012-37: Judge must disclose relationship in all cases involving a bank whose loan collection official is the judge's close personal friend, but must recuse only from cases in which the friend appears as a party, witness, or representative of the bank, or when the judge's impartiality might reasonably be questioned.

2010-37: Judge may not allow juveniles to perform court-ordered community service by participating in a jogging program with the judge because such participation could undermine the impartiality of the judge and judicial office.

2010-08: Judge may not serve as chief judge of a circuit while in a committed relationship with one of the general magistrates in that circuit, even if the judge serving as the chief judge did not have a role in hiring the magistrate. This impropriety or appearance of impropriety will continue to exist even if the judge's first act upon becoming chief judge of the circuit is to execute an administrative order formally transitioning all supervisory authority over all general magistrates to another circuit court judge.

2010-06: Judge who is a member of a voluntary bar association is not required to "de-friend" lawyers who are also members on that organization's Facebook page and who use Facebook to communicate among themselves about that organization and other non-legal matters. However, a judge may not allow an attorney access to the judge's personal social networking page as a "friend," even if the judge sends a communication to all attorney "friends" or posts a permanent, prominent disclaimer on the judge's Facebook profile page that the term "friend" should be interpreted to simply mean that the person is an acquaintance of the judge and not a "friend" in the traditional sense. This prohibition of judges "friending" attorneys who may appear before the judge remains true if the judge accepts as "friends" all attorneys who request to be included or all persons whose names the judge recognizes, and others whose names the judge does not recognize but who share a number of common friends. 2A; 2B; 3E; Commentary to 2A; and Commentary to Canon 3E(1).

2010-02: Pursuant to the Florida Code of Judicial Conduct, when a judge is a partner in a building partnership with the County Attorney, the judge must disqualify himself or herself from all cases in which the county is involved. Such disqualification is required except in cases in which the county is represented by outside counsel which is independent of the County Attorney's supervision

2010-01: Judge may not rent a room in the judge's home to a non-related person who is on community control because the judge could bear witness to the person's conduct and thus, potentially become a witness in court.